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In his article on the exclusionary rule that appears in this issue of the *Hastings Law Journal*, Mr. Halvonik makes an appeal for the continued enforcement of the fourth amendment. He contrasts the real protections provided by the amendment with the meaningless language of its counterpart in the Soviet Constitution. We share these sentiments. Because SCA 7 provides for the exclusion of evidence when required by the United States Constitution, it assures the continued enforcement of the fourth amendment. Indeed, SCA 7 strengthens the fourth amendment, because it prevents California courts from relying on nonstatutory grounds to exclude evidence obtained as a result of a search or seizure that meets that amendment's requirement of reasonableness. Today in California the fourth amendment has become practically meaningless because California courts have set a more stringent standard than that mandated by the amendment.

Mr. Halvonik, however, believes that the rights of the people of this state will suffer if California courts are unable to exclude evidence on nonstatutory independent state grounds. For example, he believes that the abolition by SCA 7 of the vicarious exclusionary rule would impinge upon these rights. Besides California, only one other state—Louisiana—has adopted this rule.[1] Can it be that California and Louisiana have a monopoly of judicial wisdom, to the exclusion of the remaining forty-eight states and the federal courts as well? If the vicarious exclusionary rule is necessary to protect the people adequately from illegal police conduct, then why haven't more states adopted it? Does a resident of California suddenly feel less secure when he or she crosses the California border, because an adjacent state follows the federal rule of standing?

As the United States Supreme Court has recognized, "Each time the exclusionary rule is applied it exacts a substantial social cost for the vindication of Fourth Amendment rights. Relevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected."[2] The federal rule of standing permits a defendant to move

1. *See* Van de Kamp & Gerry, *Reforming the Exclusionary Rule: An Analysis of Two Proposed Amendments to the California Constitution*, 33 HASTINGS L.J. 1109, 1121 n.85 (1982).

2. Rakas v. Illinois, 439 U.S. 128, 137 (1978).

to exclude evidence if his or her fourth amendment rights were violated.[3] In light of the high social cost of the exclusionary rule, the Court properly has rejected the argument "that the additional benefits of extending the exclusionary rule to other defendants would justify further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth."[4]

If California truly requires a more stringent standard than that mandated by the federal Constitution, under SCA 7 the legislature will have the opportunity to enact legislation establishing an enforcement mechanism for the stricter standard. Thus, one need not be concerned that the passage of SCA 7 would have an adverse impact upon the people of this state, for the legislature has the ability and duty to respond to the needs of the people by enacting appropriate legislation.

The enactment of the California Right to Financial Privacy Act[5] shows that when the legislature believes California needs a more stringent standard, it does take action necessary to enforce that standard. The Act affords greater protection than does *United States v. Miller*[6] to the confidentiality of bank records. The legislature provided several different remedies for a violation of the Act, including penal and civil sanctions and injunctive relief, as well as the exclusion of evidence,[7] thereby going beyond the exclusionary remedy provided by *Burrows v. Superior Court*.[8]

Mr. Halvonik has made a number of other contentions in his article, which we now address:

1) We are not suggesting the repeal of the California Constitution in criminal proceedings. SCA 7 would affect the constitution only in a very narrow area.

2) We do not disapprove of the holdings in *People v. Triggs*[9] and *Bielicki v. Superior Court*.[10] We criticized these cases because they relied on both the federal and state constitutions to exclude evidence, thereby foreclosing review by the United States Supreme Court of the California court's interpretation of federal law.[11]

3. *Id.* at 140.
4. Alderman v. United States, 394 U.S. 165, 174-75 (1969).
5. CAL. GOV'T CODE §§ 7460-7493 (West 1976).
6. 425 U.S. 435 (1976).
7. CAL. GOV'T CODE §§ 7485, 7487, 7489 (West 1976).
8. 13 Cal. 3d 238, 529 P.2d 590, 118 Cal. Rptr. 166 (1974).
9. 8 Cal. 3d 884, 506 P.2d 232, 106 Cal. Rptr. 408 (1973).
10. 57 Cal. 2d 602, 371 P.2d 288, 21 Cal. Rptr. 552 (1962).
11. Mr. Halvonik apparently believes that SCA 7 would undermine *Triggs* and *Bielicki*. This is not necessarily so. Because the holdings in these cases were based on both the federal and state constitutions, under SCA 7 the court's interpretation would remain binding on California courts unless the United States Supreme Court held to the contrary. As the United States Supreme Court has not so held, the passage of SCA 7 would not place *Triggs*

3) We are not critical of *Burrows v. Superior Court*.[12] The trailer bill (SB 1092) to SCA 7 provides for the exclusion of evidence seized in violation of *Burrows*.[13]

4) Under the federal rule of standing, Daniel Ellsberg would have been able to move to suppress evidence illegally seized from his patient file by the "plumbers." Dr. Fielding was Ellsberg's psychiatrist. It is well established that a patient who seeks psychiatric treatment has a legitimate expectation of privacy in the relationship with his or her psychiatrist.[14] The search of Ellsberg's file, therefore, violated his fourth amendment rights.[15]

5) The good faith exception to the exclusionary rule would not encourage the police to be ignorant of the law. The exception would apply only when a police officer's good faith mistake of law was *reasonable*. A reasonable police officer would not be deliberately ignorant of the law. Thus, the good faith exception usually would apply when the officer was aware of the relevant law, but had made a good faith, reasonable mistake in applying the law to the facts.

To conclude, SCA 7 would substantially benefit the public by admitting relevant, truthful evidence currently excluded on nonstatutory independent state grounds. The admission of this evidence would permit the prosecution of criminal offenders who cannot be prosecuted under present California law, and it would enhance the reliability of the fact-finding process at trial. SCA 7 would accomplish this benefit without adversely affecting the rights of the people of this state. Because SCA 7 enables the legislature to exclude evidence, the legislature will have the opportunity to codify those exclusionary rules not mandated by the federal Constitution that it believes are necessary for the protection of the public.

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and *Bielicki* in any immediate danger. Furthermore, although Smayda v. United States, 352 F.2d 251 (9th Cir. 1965), is contrary to *Triggs* and *Bielicki*, a later federal case—Kroehler v. Scott, 391 F.Supp. 1114, 1118 (E.D. Pa. 1975),—is contrary to *Smayda* and expressly approves *Triggs* and *Bielicki*. Of course, even if the United States Supreme Court were to overrule the interpretation of federal law in *Triggs* and *Bielicki*, under SCA 7 the legislature would have the power to codify the exclusionary rule of these cases.

12. 13 Cal. 3d 238, 529 P.2d 590, 118 Cal. Rptr. 166 (1974).

13. SB 1092 and SCA 7 have been presented to the legislature as a single package. For further discussion of SB 1092, see Van de Kamp & Gerry, *Reforming the Exclusionary Rule: An Analysis of Two Proposed Amendments to the California Constitution*, 33 HASTINGS L.J. 1109, 1111 n.8 (1982).

14. *In re* Lifschutz, 2 Cal. 3d 415, 431-32, 467 P.2d 557, 567-68, 85 Cal. Rptr. 829, 839-40 (1970).

15. *See* Rakas v. Illinois, 439 U.S. 128, 143 (1978).